IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.452 OF 1996

The State of Maharashtra ...Appellant.

V/s

Pandurang Mahadeo Patil, age 48 yrs, R/o. Pishvi, (Malwadi), Tal. Shahuwadi, District - Kolhapur. ...Respondent.

Ms. P.K. Kantharia, APP for the appellant - State.

Mr. Abhaykumar Apte, advocate appointed for accused - respondent.

CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATE: 3rd August, 2005

ORAL JUDGMENT: (Per. R.C. Chavan, J.)

1. Vexed by the respondent's acquittal by the learned Sessions Judge, Kolhapur for the offence punishable under section 20 and 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the N.D.P.S. Act") the State has appealed.

2. On 27/10/1993, Excise Inspector Suresh Jadhav received an information that the respondent was cultivating Ganja in his land at Pishavi. He informed his superiors, called panchas, gathered a raiding party, went to village Pishavi in a jeep and reached

the land of respondent. Apart from 510 gms of Ganja found in a cloth bundle in a shed in the field, the raiding party also found 23 Ganja plants. The entire property was seized under a panchnama. Excise Inspector Jadhav lodged the First Information Report and in course of investigation sent the property to Forensic Science Laboratory which returned a finding that the articles sent were Ganja. On completion of investigation, a charge-sheet was sent to the Court of Sessions at Kolhapur.

3. The learned Sessions Judge framed charge of offences punishable under sections 20 and 22 of the N.D.P.S. Act, 1985. Accused pleaded not guilty and hence was put on trial.

4. In course of trial, prosecution examined in all six witnesses. Accused was examined at the end of the trial. After considering the prosecution evidence, in light of arguments advanced on both sides, the learned Sessions Judge came to hold, inter alia, that there was no compliance of statutory requirements regarding recording, and transmission of information and proceeded to acquit the accused. Aggrieved thereby, the State has appealed.

5. We have heard the learned Additional Public

Prosecutor as well as the learned Counsel for the respondent - accused. We have also appraised the evidence on record to find out correctness or otherwise of the order passed by the learned Sessions Judge.

6. P.W. 6 - Excise Sub-Inspector Suresh Jadhav stated that on 27/10/1993, he received an information that Pandurang Mahadeo Patil was illegally cultivating Ganja in his field. He stated that he entered the information in a register, extract whereof is at Exhibit-33. He stated that he sent a letter to his superior, Excise Superintendent Hedao, vide Exhibit-34 seeking Hedao's permission for conducting a raid. This was done on 28/10/1993 at about 2.00 p.m.

7. P.W.3 - Excise Superintendent Hedao states that on receipt of this request vide Exhibit-25, he granted necessary permission to take action after due verification. Thereafter, the Excise Sub-Inspector gathered a raiding party, called panchas and proceeded to conduct raid at the field of respondent.

8. The learned Additional Public Prosecutor submitted that the evidence of P.W. 6 - Excise Sub-Inspector Jadhav and P.W. 3 - Superintendent Hedao would show that necessary care had been taken by the Officers

before conducting the raid without a warrant. Section 42 of the N.D.P.S. Act provides that an Officer of Excise Department, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that an offence punishable under the Act has been committed, he may, between sun rise and sun set, enter and search such place, without warrant. The learned Public Prosecutor submitted that the information had been duly taken down in writing by the Excise Sub-Inspector, and, as required under clause 2 of section 42, had even conveyed the same to the official superior within 72 hours. She submitted that there is no question of any breach of statutory requirement leading to failure of prosecution.

9. The learned Counsel for the respondent drew our attention to the admission of P.W. 3 - Excise Superintendent Hedao that the Excise Sub-Inspector Jadhav had not submitted any written note of receiving information from the informer. Thus, the requirement of law was not fulfilled. Though, there can be no doubt that the requirements of section 42 are mandatory in character, it is necessary to restrict insistence on compliance only to the extent the words of the section require. It may be seen that clause (1) of section 42 lays down that if the Officer has

reason to believe from the information given by any person and taken down in writing that the offence is committed, he may conduct a raid without warrant. Thus, for conducting a raid without warrant on the basis of the information received, it would be necessary to take down information in writing. This does not imply that the information should be recorded with the name of informer,or that exact words in which the information is received should be recorded. In this case, P.W.6 - Excise Sub-Inspector Jadhav has recorded information vide Exhibit-33. Therefore, on the count of noncompliance with mandatory provisions of section 42, the prosecution should not have failed.

10. This takes us to the next question viz. whether prosecution evidence was enough to prove possession of contraband articles by the accused? In this case, while the evidence of panch P.W.1 - Deepak Suryavanshi, P.W. 2 - Police Patil Laxman Gurav and P.W. 6 - Excise Sub-Inspector Suresh Jadahv shows that Ganja was grown in a field belonging to the accused and Ganja was also found in a hut in the said field, this evidence becomes suspicious because of evidence of P.W. 5 - Revenue Circle Officer Dinkar Mode. P.W. 5 - Dinkar Mode stated that the Excise Sub-Inspector had demanded 7 x 12 extract and map of the land belonging to the accused which he had handed

over to the Excise Officer. He has proved the 7 x 12 extract and map at Exhibits 30 and 31. In cross-examination, he admitted that he had inspected the land before 30/10/1993 i.e. the date on which the extract was given. It may be recalled that the raid was conduced on 28/10/1993. The Circle Officer stated that the record about the land did not show existence of Chhapar i.e. hut and a well before 30/10/1993, creating a doubt about the existence of hut from where some Ganja was seized. The witness (P.W.5) also stated that there was standing paddy crop in the land when he took the necessary entries. The witness (P.W.5) stated that he had not seen any crop other than paddy in the field. Ganja plants observed by other prosecution witnesses in the field of the accused were 2 to 5 ft in height. This may be seen from the evidence of P.Ws. 1, 2 and 6 as also from panchanama Exhibit-15. These plants cannot be grown overnight. Therefore, when the Circle Inspector Dinkar Mode (P.W.5),who is not only an independent witness, but also a responsible Officer of Revenue Department of the State, says that he had not seen any plants when he inspected the land before 30/10/1993, it would be difficult to discard his word lightly. This would cast a shadow of doubt on the evidence of P.Ws.1, 2 and 6. Therefore, factually, it may be difficult to hold as proved that Ganja was seized from

the land in possession of the accused. Therefore, to that extent, we would agree with the conclusion drawn by the learned trial judge viz. that the recovery of contraband article from the exclusive possession of the accused has not been established by the prosecution.

11. In view of this, we see no reason to interfere with the acquittal recorded by the learned Sessions Judge. The appeal, therefore, fails and is dismissed. Bail bonds, if any, furnished by the appellant shall stand cancelled.

(V.G. PALSHIKAR,J.)

(R.C. CHAVAN, J.)